

**UNITED STATES OF AMERICA**

**CLAYTON FULTZ,**

Case No. 2:10CR00015

## ORDER

By: James P. Jones  
United States District Judge

1. The defendant's Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C.A. § 2255 is GRANTED based on the United States' concession that the defendant is entitled to relief on his claim (a) alleging that counsel was ineffective in failing to file or consult with Fultz about an appeal, and the defendant's claim (b) is DISMISSED WITHOUT PREJUDICE to the defendant's refiling this claim in a later § 2255 motion following appeal, if necessary;

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3. Upon entry of the Amended Judgment, the clerk SHALL also prepare and docket a Notice of Appeal from the Amended Judgment on the defendant's behalf, which the defendant may move to withdraw if he decides not to pursue the appeal;

4. The Notice entered by the court on June 11, 2012 (ECF No. 140), giving the defendant 21 days to respond to the government's "Motion to Dismiss," is VACATED as moot, because the defendant need not respond to the motion conceding that he is entitled to relief; and

5. The clerk SHALL close the § 2255 case, nothing further remaining to be done therein.

ENTER: June 12, 2012

/s/ James P. Jones  
United States District Judge